

COHEN & GREEN

May 18, 2023

Hon. Vera M. Scanlon, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East, 1214 South
Brooklyn, New York 11201

By Electronic Filing.

Re: Payamps v. City of New York, 22-cv-00563

Dear Judge Scanlon:

I am co-counsel for Plaintiff in this matter. I write in response to Defendants' motion filed earlier this evening requesting an extension of today's deadline to respond to Plaintiff's RFAs, which are directed at obtaining information to ascertain the identities of the Doe Defendants.¹ As an initial matter, Mr. Pesin did not tell me that he intended to file his motion for an extension of the RFA deadline. Had he done so, I would have included a more detailed position for him and his supervisor, Alexandra Corsi, to include in Defendants' motion; and I would have been able to use normal business hours to begin drafting an opposition in anticipation of his 6:10 p.m. motion, which he first sought consent for at 1:33 pm — all but ensuring Defendants will automatically admit all the RFAs if the Court denies the extension.

Mr. Pesin states in his letter that he objects to Plaintiff's position regarding Defendants' motion (though we did not know he was filing the motion) because he intends to make some disclosure to us tomorrow. Mr. Pesin never informed us that he intends to make a disclosure tomorrow, so his feigned indignation regarding our opposition is unjustified. In any event, given his course of conduct regarding this issue, we do not credit his cryptic representation that he intends to disclose something tomorrow, because why not just disclose it today? Rather than inform us that he intends to make some disclosure tomorrow, yesterday, he informed us that he — contrary to his representations at the Court conference on April 11 where he promised to work to identify the Doe Defendants — in fact would not be providing the names of the Doe Defendants as they are described in the complaint.

¹ Contrary to Mr. Pesin's assertion, the RFAs are not directed at non-parties. The RFAs are directed at the Defendants. Moreover, Mr. Pesin is the one who has repeatedly said he would interview the non-party City employees involved in the incident, and never provided permission for us to speak with these people. As such, again, his indignation directed at this office for our efforts in complying with our obligations to identify the Doe Defendants is unjustified.



In fact, as late as May 9th, Mr. Pesin emailed me and asked me to tell him “which John Does [I want the Defendants] to identify.” While his question was unsettling given the fact that he knows the answer since it has been repeatedly discussed amongst counsel and with the Court, I responded, in sum and substance, reminding him that he promised to produce all of the names of the Doe Defendants, and that Plaintiff obviously requires the names of all Defendants. I then further specified yet again for Mr. Pesin that “the Doe Defendants are those officers involved in the seizure and force used on Mr. Payamps. These officers are also the officers involved in taking Mr. Payamps to the ground, as has been discussed at length and as depicted on the video in this case.” Mr. Pesin then responded reversing course and stating that he would not identify the Doe Defendants “in the way the Complaint suggests” and merely re-provided names of individuals who appear in photographs and video produced through the CCRB.²

I requested a meet and confer with Mr. Pesin on this issue. Today, when he informed me he would not respond to the RFAs on time, I told him why I objected and asked that we discuss RFAs at tomorrow’s meet and confer. Mr. Pesin told me his supervisor, Alexandra Corsi, would attend the meet and confer. Without providing any notice, he then filed his motion of this evening requesting an extension of today’s deadline.

Plaintiffs respectfully request that the Court deny Defendants’ latest request for an extension of time to provide discovery regarding the identities of the Doe Defendants. If the Court is not inclined to deny the motion, in the alternative, Plaintiff respectfully requests that the Court issue an Order directing Mr. Pesin to show cause why he should not be sanctioned under Rule 11 for his recent explicit refusal to identify the Doe Defendants described in the Complaint, despite his prior representations to the Court that he would do so. Plaintiff has been prejudiced by Defendants’ new refusal to comply with their prior promises to the Court, which promises the Court then relied upon in ruling that Plaintiff’s motion at ECF No. 39 (to compel the Defendants to provide the names of Doe Defendants) is moot. More than two months have passed since Plaintiff filed that motion. Defendants’ strategic decision to burn time while Plaintiff’s statute of limitations ticks down should not be rewarded with continued extensions. Defendants’ game-playing around the statute of limitations ill fits the ethical obligations of a government lawyer (*see Dacosta v. City of N.Y.*, 296 F. Supp. 3d 569, 605 (E.D.N.Y. 2017)), and essentially seeks to “transform discovery of the names of police officers who engaged the Plaintiff into a game of hide-and-seek.” *Archibald v. City of Hartford*, 274 F.R.D. 371, 382 (D. Conn. 2011).

² During this email exchange, I asked Mr. Pesin if Defendants would consent to Plaintiff naming all of the NYPD members identified in the CCRB file, as Defendants in this case. Mr. Pesin responded that he would get back to us regarding the request to amend the complaint to “name all the CCRB officers.” [sic]. We still have not heard from him regarding our request.



As always, I thank the Court for its attention to this matter.

Respectfully submitted,

/s/

Jessica Massimi

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cc:

All relevant parties by ECF.